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ACCOUNTING EDUCATION AND STRENGTHENING OF THE PROFESSION: REPORTS OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

Recent developments affecting the European accountancy profession

Note by the Secretary-General

The following report was contributed by the Federation of European Accountants to promote discussion during the eleventh session of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting.

It concentrates on regulatory and structural reforms resulting from internationalization and liberalization in Europe, which have a determining influence on the context in which education and training programmes should be considered.

It complements the reports of the Secretary-General and should enable the Group to discuss, in a comprehensive manner, the type of education which is required to attain the necessary skills and knowledge in the European accounting environment. The Transnational Corporations and Management Division acknowledges with appreciation this contribution.

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Annex

RECENT DEVELOPMENTS AFFECTING THE EUROPEAN ACCOUNTANCY PROFESSION

SUMMARY

The present report concentrates on regulatory and structural reforms resulting from internationalization and liberalization in Europe, which have a determining influence on the context in which education and training programmes should be considered. The nature of the new environment for which current and future members of the accountancy profession should be equipped is explored. The emphasis is not so much on changes in demand patterns for the services provided by accountants (i.e., changes arising from the internationalization of clients) as on changes in supply patterns (i.e., changes in the profession's regulatory structure which will enable accountants to respond to changes in demand, given that many regulations have traditionally hindered or prevented international practice). Current and future developments in Europe will greatly facilitate mutual recognition, freedom of establishment and freedom to provide services on a cross-border basis, for both firms and individuals. This will lead to the creation of a single market for accountants and accountancy services.

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INTRODUCTION

1. Throughout Europe, the accountancy profession and its different components make up what could be called a "very regulated profession". As a result, developments of a legal or regulatory nature which have taken place in Europe during recent years have constituted the main source of change for the profession, more than the economic and social changes which have characterized the developed countries since the Second World War. This regulation takes place at two different levels:

(a) The regulation of the services provided by professional accountants, which give rise to regulated activities such as the statutory audit of accounts, the audit of takeovers and mergers, public sector audit etc., of which the content, procedures, frequency, final product etc., are defined by law in many countries;

(b) The regulation of the accountancy profession itself as a profession which affects the organization and functioning of professional bodies, the education and training of the professionals who are members thereof, the ethical requirements with which they must comply etc.

2. In recent years, there have been developments in both these areas of regulation. Although Europe is made up of over 30 countries, the driving force for these legislative and regulatory changes - and an element which distinguishes Europe from the rest of the world - has been the development of the European Community (EC) in successive stages since 1957. Without going back too far, it is useful none the less to begin by studying in detail all those developments in Community regulation which have had a greater or lesser impact on the accountancy profession and its activities in the 12 member States, before turning to the way in which those changes will affect, or are already affecting, all of Europe.

3. One should not forget that the process of creating a single market made up of the countries of the EC is far from complete, and it will be noted that there are still many shortcomings or gaps as far as the accountancy profession and its services are concerned. The accountancy profession differed from one member State to another in 1957, and the main elements of the diversity still exist today. The regulations which continue to affect its activities remain very diverse in the EC, as shown in the annexes below. It is therefore essential to bear in mind when reading what follows that the "European accountant" does not exist. Even in the 12 member States of the EC alone, there are over 20 different professional profiles if one looks only at the highest level of professionals, and almost 40 if one includes all the different categories of professional, without distinguishing between their levels. This diversity, which is one of the strengths of the profession, is none the less also a great source of difficulties for the national or European legislators who are responsible for developing the legal environment in which accountants practise. This state of affairs causes additional problems in changing the laws and regulations affecting the profession.

I. HARMONIZATION OF STATUTORY AUDIT IN THE EUROPEAN COMMUNITY

4. The statutory audit of accounts is one of the oldest activities of the accountancy profession. All national legislation in this area, as well as that of the Community which followed, confirms the obligatory nature of statutory audit and the allocation of responsibility for it to professional accountants alone. Such unanimity in the EC (and beyond) is sufficiently remarkable to be underlined. As regards Community law, this activity has been addressed, in either a principal or subsidiary manner, by several directives or proposed directives. Each of them covers a different aspect of the regulation of this activity.

A. Fourth and Seventh Company Law Directives

5. The Fourth Directive (78/660/EEC) which concerns the annual accounts of certain forms of company, and the Seventh Directive (83/349/EEC) which expands upon it and concerns consolidated accounts should have entered into force in all member States in 1980 and 1988, respectively. Despite "normal" delays in certain countries, both of these directives are now applied throughout the EC. They have confirmed the obligatory nature of the statutory audit of accounts in all the countries of the EC, both for individual company accounts and for consolidated accounts.

6. The task assigned to statutory auditors is therefore the same throughout the EC, which demonstrates the special nature of this activity. It is certainly one of the only activities, of all of those carried out by professional accountants, for which the same label covers an identical reality throughout the EC. Both directives indicate that this activity can only be carried out by professionals authorized in accordance with the law of the member State where the audited financial statements should be published. This authorization was the subject of the Eighth Company Law Directive, the provisions and implementation of which will be examined in some detail below.

7. None the less, even if the accountants' task and its content are the same, one should not imagine that the financial statements upon which the professional statutory auditor should express an opinion are the same throughout the EC. It would be somewhat hasty to consider that these two directives have completely addressed the question. In the first place, there are several subjects which have not been dealt with by the directives as far as their accounting treatment is concerned, especially those subjects which have emerged most recently. In addition, the two directives contain a large number of member State options: the 64 options in the Fourth Directive and the 50 in the Seventh Directive mean that there continues to be divergence between member States in areas which are, in principle, harmonized. It is these differences which continue to give statutory auditing in the EC a very national character: the accounts audited by professionals are not the same, and the opinion which they give on them should be interpreted in the context of a regulatory environment which remains in many specific respects national.

The surveys carried out by the Federation of European Accountants (FEE) in 1989, 1991 and 1992 on the comparability of financial statements published in Europe have emphasized this: although there is a harmonized basis, many specifically national differences and problems still remain.

B. Fifth and Eighth Company Law Directives

8. To begin with, the EC institutions had very ambitious ideas with regard to the harmonization of statutory auditing in the EC. This led to the official launching in 1972 of a proposal for a Fifth Company Law Directive. Its objectives were to "protect the interests of both shareholders and third parties with regard to the structure of public limited companies as well as the powers and duties of their organs". Inter alia, chapter IV dealt with the preparation and audit of annual accounts, and contained a number of rules on the way in which the annual accounts should be approved, and on the independence, appointment, dismissal, length of appointment, remuneration, professional liability etc. of the statutory auditor.

9. Very quickly it became obvious that the adoption of the Fifth Directive would be delayed significantly because of the positions taken, and which could be reconciled only with difficulty, by certain member States in relation to the provisions dealing with the structure of companies and worker participation. This pessimistic outlook proved justified, because the directive has still not been adopted and is nowhere near being adopted. This is why the European Commission, in 1978, launched a proposal for an Eighth Directive specifically concerning the authorization of professionals charged with carrying out the statutory audit of accounts. This new Company Law Directive was adopted in 1984 (84/253/EEC). It is only a partial success, because it does not fully address the most difficult subjects, such as the independence or professional liability of the statutory auditor. It therefore constitutes only a limited substitute for the ambitious provisions contained in chapter IV of the initial proposal for the Fifth Directive.

10. The Eighth Directive lays down the conditions to be respected by both firms and individuals in order to carry out statutory audits in the EC. As well as requirements of integrity which are normal for this type of profession, the directive defines in some detail the qualification required of professionals authorized in the member States. It is therefore necessary, according to the directive, to have "attained university entrance level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university, final examination level organized or recognized by the State". The directive then lays down a list of subjects which should be specifically covered by the test of theoretical knowledge included in the examination (article 6). The directive is therefore quite precise and exhaustive as regards the topics to be mastered by statutory auditors, but on the contrary remains very vague as to the minimum level of knowledge required in those subjects. In accordance with the tradition and practice of each country in the EC, one can observe significant differences as regards what is understood by "university, final examination level".

11. The Eighth Directive also states that "in order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee must complete a minimum of three years' practical training in, inter alia, the auditing of annual accounts, consolidated accounts or similar financial statements. At least two thirds of such practical training must be completed under a person approved under the law of the member State in accordance with this directive; the member State may, however, permit practical training to be carried out under a person approved by the law of another member State in accordance with this directive (article 8). This confirms in a very clear fashion the double requirements to be fulfilled by the education and training of professional statutory auditors: a high level of theoretical knowledge combined with a good capacity to apply this theoretical knowledge in practice. These requirements are not novel in themselves. Even if the directive gave official blessing to practices which were already widespread in the member States, it did none the less contribute to harmonizing the content and therefore formalized for the first time in an explicit manner the minimum conditions to be met for the authorization of statutory auditors.

12. However, the Eighth Directive contains derogations permitting member States which so wish to take into account qualifications obtained abroad (article 11). The application of these provisions is not limited to countries of the EC alone. Member States retain complete control over this process, which operates at their discretion. In addition, they can also control the manner in which candidates are examined on the legal knowledge required in that member State for the purposes of statutory auditing.

13. The directive further defines the conditions to be respected in order to authorize firms to carry out statutory audits in a member State. At least three requirements must be met simultaneously in this regard:

(a) The individuals who carry out statutory audits on behalf of the audit firm must satisfy the conditions imposed by the directive in order to be authorized personally themselves;

(b) The majority of the voting rights must be held by individuals or firms of auditors who are themselves authorized to carry out statutory audits;

(c) The majority of the members of the administrative or management body of a firm of auditors must be individuals or firms of auditors who satisfy the conditions imposed by the directive to be authorized themselves.

If any of these conditions is no longer fulfilled, the authorization of the firm is withdrawn.

14. In accordance with the directive, member States should ensure that the names and addresses of all the individuals or firms authorized to carry out statutory audits in their country are published appropriately, and this continues to be done in member States by maintaining lists or registers of authorized professionals.

15. The Eighth Directive should have entered into force in member States before 1 January 1990 at latest - that is to say, over three years ago. But as happens unfortunately too often, the effective application of these requirements has suffered a certain delay in many member States. The Netherlands was recently condemned by the EC Court of Justice for failures in implementing the directive. In addition, all of the countries which have stated that they have met their implementation obligations do not necessarily have legislation which conforms with the directive in all respects. Having examined the content of the directive, it is therefore essential to study the way in which the requirements have actually been implemented in reality.

16. In Belgium, France, Luxembourg and Portugal, the implementation of the Eighth Directive has led to only a few modifications in the regulation of the profession of statutory auditor. This results simply from the fact that the main features of the directive were largely inspired by the regulation in those member States or was not in conflict with the status quo. This is evidenced by the fact that France has just made, at the beginning of 1993, the few modifications necessary to make its regulation conform completely with the directive, despite the minor importance which these changes had.

17. On the contrary, the introduction of the requirements of the directive in national law has had, or is having, much more significant effects in other countries. In some of them, it has even led to a complete reform of the profession, its structure and the organization of its activities. In these countries, in general, the implementation of the Eighth Directive was linked to that of the First Directive on the mutual recognition of qualifications, a directive which will be examined in detail in the section below, in order to deal at the same time with all of the measures which could have an effect on the regulation of the accountancy profession and its activities.

18. Among the countries which have implemented the Eighth Directive, it is possible to distinguish two very different approaches. Some have chosen to create or maintain a specific functional title relating to the carrying out of statutory audits, as recommended by FEE. In these countries, the situation is very simple as regards this activity: there are professionals who have the functional title of statutory auditor and who are thereby authorized to perform this activity in accordance with the provisions of the laws or regulations introduced to apply the Eighth Directive, and there are other accountancy professionals who do not have this title and who, using a different professional title, perform other activities of the accountancy profession, with the exception of statutory audits. In this first category of countries are Belgium, France, Italy, Luxembourg and the United Kingdom. Belgium, France and Luxembourg already had a system of functional title even before the implementation of the Eighth Directive (réviseur d'entreprises in Belgium and Luxembourg, commissaire aux comptes in France). Its introduction in Italy and the United Kingdom, on the other hand, is due to the implementation of the directive. In Italy, the title of revisore contabile was created by a law of January 1992, and in the United Kingdom that of registered auditor has only existed since 1 March 1991. In these two countries, as opposed to the situation which existed in Belgium, France and

Luxembourg, the revisore contabile and the registered auditor are not members of a specific professional organization. The authorities simply keep a list or register of persons having this title, nothing more. In effect, in these countries, the functional title is used in conjunction with the normal educational title of the profession such as dottori commercialisti or ragionieri in Italy and chartered accountant or certified accountant in the United Kingdom. The professionals authorized to carry out statutory auditing in Italy and the United Kingdom therefore necessarily have two professional titles: their original educational title and the functional title necessary to carry out statutory audits. Without this latter title, the professionals can carry out the other activities of the accountancy profession, apart from statutory auditing. In a more general manner, in all the countries where there is a functional title for carrying out statutory auditing, this can be used only by those professionals who comply with all of the obligations imposed by the law to perform this activity in terms of independence, incompatibilities, permanent education, establishment or even residence in some cases, ethics etc. If one of these conditions is no longer fulfilled, the professional immediately loses the functional title and all of the rights attached to it. On the contrary, he/she always keeps, if he/she had one, the educational title which was his/hers from the beginning.

19. The other countries which have implemented the Eighth Directive or are in the process of doing so (Denmark, Germany, Greece, the Netherlands, Portugal and Spain) have not chosen to introduce a functional title for statutory auditing. It is therefore the normal professional educational title which permits the carrying out of statutory auditing in these countries, without any particular distinction between this activity and the other activities which are performed using the title. In these countries, it is therefore not possible to make a distinction on the basis of the title used between the professionals who carry out statutory audits and those who carry out other activities. This distinction is not relevant, given that all of those having the educational title of the profession are automatically authorized to perform statutory audits as well, in addition to all of the other activities of the profession. The absence of such a distinction between professionals' activities will have repercussions on the way in which the general system of mutual recognition of diplomas will be implemented in these countries, as will be explained in the section below.

20. Among the countries which have not chosen the route of a functional title, three examples are given which illustrate well the effects of the Eighth Directive and its limitations in harmonizing the regulation of our profession. In Germany, when implementing the Eighth Directive, the Government created a second educational title, that of vereidigte Buchprüfer, which is of a lower level than the professional title which existed previously, that of Wirtschaftsprüfer. While the Wirtschaftsprüfer in Germany retained the right to perform all of the activities of the accountancy profession without any limitation, the vereidigte Buchprüfer were given a limited competence, creating a category of lower-level professionals in that country. In effect, the vereidigte Buchprüfer are only authorized to audit

the annual accounts of small- and medium-sized German private limited companies (GmbH). The audit of public limited companies (AG), of large private limited companies and of consolidated accounts is forbidden to them. This is one of the most surprising interpretations of the Eighth Directive, as it has led to the creation of new differences, whereas the objective had been to reduce, or even eliminate, them.

21. In Greece, the implementation of the Eighth Directive is in the process of giving rise to a complete reform of the accountancy profession in that country. Up until now, there has not been a truly independent liberal profession in that country, because Soma Orkoton Logiston, the only professional organization officially recognized, is in effect part of the public administration attached to the Ministry of Economics and Finance. Admission to it is by way of civil service entrance examination, as for the entire Greek civil service. The carrying out of statutory audits in Greece was assigned to Soma Orkoton Logiston as an institution, and not to the individual professionals who made it up. The title of Orkotos Logistis therefore related to a certain position in the hierarchy of the organization, and not to a particular professional qualification. An Orkotos Logistis leaving Soma Orkoton Logiston immediately lost all of his/her rights at the same time as his/her title, and was no longer authorized to carry out statutory audits or any other activity regulated in Greece. The new law adopted in September 1991 and the presidential decree of July 1992 to implement it change all of this by creating a new independent professional organization which will not itself carry on the professional activity and whose members are free to practise either individually or as members of a firm of their choice. A single professional title, Orkoton Elekton, will exist in the future and will grant access to all of the activities of the Greek accountancy profession, including statutory auditing.

22. Finally, in the Netherlands, the implementation of the Eighth Directive was used to grant to members of the second-tier professional organization in that country, NOvAA, the right to perform statutory audits, subject to no limitation, an activity which until then was reserved exclusively to members of NIVRA, the first-tier professional organization. The scope of practice of the two categories of professionals will therefore become identical when the law currently being adopted enters into force, and only the length and content of the education and training will continue to differentiate these two categories of professionals in the future. As is already being done as well in the case of Italy for the dottori and ragionieri, the introduction of the Eighth Directive will simply lead to bringing the education and training of members of the second-tier organization into line with Community requirements, without giving rise to any particular reforms as far as members of the first-tier organization are concerned.

23. In concluding this rapid overview of the measures introduced in the EC in relation to the regulation of statutory auditing, one could be struck by the number and significance of the disparities encountered when one enters into detail as to the organization of the profession in each country. Apart from

the fact that at this stage of the history of the profession, certain changes are still too recent to consider them as definitive or to measure their real impact, if one steps back one can also see that the main principles governing the practice of statutory auditing in the EC are, despite everything, very homogenous from country to country. Above all, the content of the activity and the role which it plays in the economy are the same everywhere. Statutory auditing is regulated in all member States, and is systematically reserved to members of the accountancy profession who fulfil certain minimum conditions of education, training and qualification. This minimal harmonization is sufficiently remarkable to be underlined, in addition to which statutory auditing is the only activity of the European accountancy profession to present such a level of harmony. It is difficult to tell whether the Community directives are the cause or result of this: it is certainly a bit of each. In any event, statutory auditing still remains the only activity of the profession to have been the subject of specific directives, which gives it its very particular character. All of the other activities remain unaffected by the development of the Community, at least for the time being, and therefore retain their original characteristics deriving from the law of each member State. In these areas, one is therefore a long way from the completion of a true single European market in accountancy services.

II. THE GENERAL SYSTEM OF MUTUAL RECOGNITION OF DIPLOMAS

24. Although the Eighth Directive led to certain progress, it has not led, as we have seen, to the creation of a single accountancy profession in the EC and leaves untouched a number of significant differences between member States. In addition, the directive did not give professionals any rights to establish or to practise in countries of the Community other than their home member State. Things would have remained there if member States had not decided in 1986 to change approach, having learned the lesson of almost 30 years of efforts to harmonize Community law. The signature of the Single European Act in that year enshrined the philosophy of "mutual recognition" developed by the EC Commission following the "Cassis de Dijon" decision of the EC Court of Justice. The main consequence of the Single European Act was that it was no longer necessary to wait for legislation to be the same throughout the EC before removing the frontiers between member States. The Treaty was the point of departure for the programme for completion on 1 January 1993 of what is known as the Single Market.

25. For the regulated professions in the EC, this new policy led to the stopping of work on sectoral directives (such as the Eighth Directive) in favour of a general approach covering all the professions and based on the mutual recognition of professional qualifications. In order to do this, the European Commission identified three essential elements without which no progress was possible:

(a) The definition of regulated professions and the professional titles encompassing them;

(b) The definition of technical qualifications necessary to practise a profession (diplomas, professional experience etc.);

(c) The definition of the ethical qualification necessary to practise a profession.

26. To implement this new approach, the European Commission prepared two directives to put in place a general system of mutual recognition of diplomas: the first directive covers higher education diplomas awarded upon completion of professional education and training of at least three years duration; and the second directive covers all the diplomas or certificates awarded on completion of professional education (secondary level or higher) of less than three years duration. The first directive was adopted in 1988 (89/48/EEC) and the second in 1992 (92/51/EEC). These two directives are based on four principles which should be recognized, even though the European Commission has never made them explicit. In effect, the precision and relevance of these principles for a profession, as well as the problems and limits of the process of mutual recognition for the professionals which make it up, determine the harmonious application of the directives in the member States. The four principles are the following:

(a) A professional authorized to carry on a profession or a regulated activity in one member State is equally qualified to carry on the same profession or regulated activity in the other countries of the EC. There may be differences between the member States as to the regulation and content of the activity in question, but this is not allowed to call into question the equivalence, in principle, of qualifications, and can be remedied by the application of appropriate compensation measures. The directives therefore foresee a range of measures for partial requalification designed to permit candidates to overcome the most significant differences or to demonstrate that they have compensated for them.

(b) The level of qualification of a professional is evidenced, or can be validly measured, by the length of the period of study which must be undergone to have access to the profession. It is for this reason that two separate directives were prepared, the scope of application of which is distinguished in terms of length of study (three years of higher education, on the one hand, less than three years on the other). The general system of mutual recognition of diplomas resulting from these two directives establishes a stratification system for all regulated professions on the basis of the length of study required to have access to each of them. The procedures to be followed for obtaining recognition of a professional qualification in another member State within the same band are therefore not the same as when recognition requires access to a higher level in the host member State. The different bands are the following:

(i) Less than one year of higher education;

(ii) From one to three years of higher education;

(iii) Between three and four years of higher education;

(iv) More than four years of higher education.

(c) In each sector of the economy which is regulated in the EC, there are structures or professional organizations which correspond from one member State to another. As a result, it is possible to compare the different regulated professions in the EC between member States. There is a minimum level of homogeneity as regards the way in which the regulated activities are divided or allocated between the different professions and in the manner in which these professions are regulated in all member States. There may well be differences between the member States, but these are, by definition, marginal and do not affect at all the core of the activity or the basis of professional regulation. The system of compensation foreseen by the directives and which has already been described should, as a consequence, largely suffice to overcome the difficulties without posing a barrier to process of mutual recognition of the profession qualification in question between the member States.

(d) Regulated services can only be provided in a given member State by professionals authorized for this purpose in that country. The provision of a regulated service in a member State therefore requires that the professional providing it should already be authorized by the competent authority in that member State. In many cases, obtaining this authorization is linked to the effective establishment of the professional in the member State where he/she wishes to practise, to his/her membership of a professional organization in that country (which links in with the notion of a corresponding professional organization already mentioned) and to compliance with all the professional rules of a technical or ethical nature governing professionals in that country. The professional who has obtained mutual recognition for his/her qualification is therefore obliged to adapt to all of the rules of the host member State in order to be able to provide in that country exactly the same services as those already provided by locals, at least from the point of view of regulation. In this sense, the general system of mutual recognition of diplomas is very clearly aimed at permitting the implementation of the provisions of the Treaty of Rome relating to the free movement of professionals within the EC, without having any other effects in the area of the free movement of services, goods and capital.

27. It is considered that within the same band, there is no major difference in the level of qualification of professionals from one member State to another and that, as a consequence, the recognition of the professional qualification should be easier than if the profession to which one gains access in the host member State were in a higher band than that in the home member State. In this latter case, the second directive (92/51/EEC) foresees a system of "passerelles" which permits, thanks to the operation of compensation measures, the benefit of recognition of the professional qualification without changing anything about the level of qualification demanded in the host member State.

28. As a result of these principles and the general philosophy which they reflect, the general system of mutual recognition of diplomas is not intended, and does nothing, to change at all the way in which the professions and regulated services are organized in member States. It simply seeks, taking into account the differences which exist and which it recognizes, to permit professionals in the EC to be able to circulate more freely and easily from one member State to another. The general system of mutual recognition of diplomas, furthermore, concerns only individuals and completely ignores firms which may be part of the professions in question.

29. Without going too much into the detail of the provisions contained in the two directives, it is none the less essential to understand their basic mechanisms. To simplify matters, the explanations will concentrate on the provisions contained in the first directive (89/48/EEC) relating to professions, access to which requires the completion of at least three years' higher education. Substantially all of the accountancy profession in the EC meets this requirement. On the other hand, the second directive (92/51/EEC), even if it obeys the same principles, has been adopted too recently to have been adopted by member States, and it is therefore not yet possible to assess its impact, especially as far as the "passerelles" are concerned. What follows, therefore, relates only to the process of mutual recognition of diplomas within the band of those professions requiring of their members at least three years of higher education. The level of more than four years already mentioned is only of interest for the "passerelles", and is therefore covered only by the second directive (92/51/EEC) and not by the first directive (89/48/EEC).

30. The principles of the system of mutual recognition of diplomas are quite simple. To begin with, it is necessary to be a professional in one's home member State. This means that the candidate should meet all of the requirements imposed in his/her country of origin in order to be able to carry on a profession or given activity. These conditions generally relate to the possession of one or more diplomas, to bearing a professional title, to membership in a professional organization etc. The treatment of professionals in the course of training is not dealt with at all by the directive, and a partial qualification therefore gives no right to any recognition abroad of the practice rights which were not yet obtained in the home country.

31. Having met this condition, it is then necessary to assess whether any compensation measures should be applied. It has been seen that such measures are designed to overcome the differences which might exist from one member State to another in the level of education of professionals (length of studies, professional experience) and in the regulation of the profession or its activities. According to the type of difference to be dealt with, the compensation measures applied will be different - supplementary education, period of supervised training or aptitude test. The directive foresees that the competent authorities of the host member State should study each application and decide, on the basis of the profile and origin of the applicant, if there is a need to impose compensation measures, and if so, which one of them, since only one measure (education, training or test) can be

imposed on each candidate. When the choice is made, the contents of the compensation measures should be adapted specially to the particular situation of the applicant. All of the precautions contained in the directive seek to avoid applicants being subject, in the host member State, to unreasonable demands representing duplication with their original qualification.

32. The end result, when the requirements of the compensation measures have been met, is the right of the professional to practise his/her profession in the host member State or provide services there under the same conditions as those to which professionals of that country are subject, as has already been pointed out.

33. Even if the principles are relatively simple, the reality, is considerably less so. The first directive (89/48/EEC) should have been implemented in the EC before 4 January 1991. It is therefore possible, more than two years later, to examine the way in which these rules have been applied for the accountancy profession in the countries which have incorporated them into their national law. It has been seen that statutory auditing is the only activity of the profession to have been the subject of Community requirements, and that there is a relative harmony in this area between the member States. It is for this reason that since 1988 FEE has recommended the creation of a specific functional title for the exercise of this activity. It would therefore have been easy to implement mutual recognition of the title, by applying the first directive (89/48/EEC) independently of mutual recognition of professional educational titles and thus independently of all the other activities, the great diversity of which has already been pointed out. Unfortunately, only half the member States have chosen this solution, which wipes out most of its positive effects even for those member States which have implemented it. There is therefore a monolithic application of the first directive (89/48/EEC) which treats the entire European accountancy profession as if it were one and the same throughout the EC.

34. The concept of "professional" varies from country to country. In those countries which do not have a functional title for carrying out statutory auditing, only those professionals authorized to perform that activity in their home member State can benefit from mutual recognition for their professional qualification; those who are not so authorized are excluded. In those countries where there is a specific functional title for carrying out statutory audits, a more nuanced approach is possible, according to the origin of the applicant. Under this approach, it is very important to identify corresponding professions, and this gives a disproportionate importance to statutory auditing in relation to its real significance when compared with the total range of activities carried on by the European accountancy profession, even if it is far from being negligible. In light of the diversity of the profession in Europe, this seems a bit simplistic.

35. On the other hand, FEE has had a total success in its approach to the compensation measures which may be imposed on those applying for mutual recognition of their professional qualifications. Since the Eighth Directive

has achieved a significant level of harmonization of the level of qualification of statutory auditors in the EC, it was not possible to require applicants to undergo supplementary education, because this type of measure can only compensate for differences in the level of professional education and training. Even though the accountancy profession covers a scope of activity much larger than that of statutory auditing alone, the idea finally accepted was to consider that this rule was applicable to the totality of the profession and its services. On the other hand, it was not possible to ignore the fact that, despite the efforts made at Community level, substantial differences remained between the requirements of member States in most, if not all, the areas of importance for the profession. To deal with these differences and with their inevitable consequences on the education, training and experience of professionals, FEE recommended to Governments in the EC to put in place an aptitude test. This solution has the advantage of being more rapid for the applicants, being less demanding in its duration and permitting the host member State really to check the level of knowledge which the foreign professional has of its national system. In addition, the organization of a test requires the drawing up of a programme, which enables one to draw the attention of applicants to those areas in which there are differences between the regimes of the home and host member States. Until now, all the member States which have implemented the directive for the accountancy profession have chosen to impose an aptitude test on foreign professionals wishing to benefit from the mutual recognition of diplomas. As a general rule, this test covers company law, tax and professional ethics. At least from this point of view, there is a certain harmony.

36. As against this, the coverage of these tests and the way in which they have been designed varies significantly from one member State to another. In those member States which have already had to organize a test (certain member States have so far gone no further than a decision in principle to impose a test, the form and content of which is still to be defined), there are more or less demanding tests - in Germany the applicants, without any distinction on the basis of origin, must sit two written exams of six hours each before undergoing an oral test of one hour; in France, the applicants undergo an oral examination of one hour after having answered a multiple choice questionnaire. The tests foreseen in Belgium, Greece and in the United Kingdom, the only other countries in which the rules have already been put into operation or are drawn up in sufficient detail, fall somewhere between these two extremities and are more or less adapted to the initial profile of the applicants. In all cases, it can now be seen, more than two years after the entry into force in principle of the directive, that there is a very small number of countries where professional accountants can effectively benefit from the mutual recognition of diplomas and that in any case the number of professionals who wish to benefit from it remains very limited - not to say negligible. As far as we are aware, in all of the member States fewer than 10 professionals had undergone aptitude tests prior to 31 December 1992. The European Commission also recognizes unofficially that the accountancy profession is not an exception and that, as a general rule, none of the professions covered by the first directive (89/48/EEC) show any great enthusiasm to benefit from the mutual recognition of their qualification in

another member State. The Commission has also found out, during the two years in which the first directive (89/48/EEC) has been operating, that only very particular circumstances lead professionals who could benefit to make use of the directive. In effect, for all of the professions combined, the provisions of the directive have only been used when a professional has had to move abroad to accompany a spouse who has recently transferred to another member State, or when the professional suddenly decides to go and live in another member State for any other reason. Given that there are not many such situations, it is not reasonable to expect significant migration flows. This underlines, on the other hand, that the general system does not respond to any particular economic need, because the two situations described give rise to a range of problems for which the mutual recognition of diplomas provides an answer to only the major professional problems. No matter how perfect the general system of mutual recognition of diplomas might be, there is a strong risk that its use will remain marginal.

37. The progressive implementation of the directive in member States and the effective organization of aptitude tests for the accountancy profession in an increasing number of countries should, however, permit a significant increase in the number of those benefiting from the mutual recognition of diplomas in the years to come. The professional organizations are actively seeking the acceleration of this movement. The first results obtained, however, show that the general system of mutual recognition of diplomas, as it results from the first (89/48/EEC) and second (92/51/EEC) directives, will not give rise in the accountancy profession, as in many of the regulated professions, to significant migratory flows within the EC, even after its complete implementation in all member States.

III. LIBERALIZATION OF THE EUROPEAN ACCOUNTANCY PROFESSION

38. The Treaty of Rome, as adopted in 1957 and as modified in 1986 by the Single European Act, provides for the free movement within the EC of goods, people, services and capital. For the accountancy profession, this implies the free movement of professionals, both individuals and firms, and of all the services which they can offer. The general system of mutual recognition of diplomas, which has now been adopted at Community level (even if its implementation risks taking several more years), is not capable in and of itself to meet these broad ambitions. In effect, as has been shown, it will only permit the free movement of those members of the profession who are natural persons (freedom of establishment), and even then in a very limited way. Thirty-five years after the signing of the Treaty of Rome, the creation of a true single European market for accountants and accountancy services has not been achieved, although some modest progress has been made.

39. If one really wishes to bring about a European market for the accountancy profession which, unlike the current situation, would not be a simple combination of national markets retaining their own structures and national rules, it is necessary to go much further with the process of liberalization. FEE has identified four main areas in which significant additional progress is

essential if a single European market is to be put in place. These are, in no particular order of priority.

A. Freedom of movement and of establishment for firms

40. As far as firms which are members of the accountancy profession in a member State are concerned, this freedom involves the right to establish branches in other member States which are not only simple legal entities, but which can also be recognized as members of the accountancy profession in that country. This means putting in place, while recognizing their specific characteristics, a system of mutual recognition for firms similar to that which has already been developed for individuals.

41. This freedom is essential for the accountancy profession, because, unlike most other professions in the EC, it makes very significant use of collective forms for carrying out its activities in all member States. No matter what the national regulation in this area might be, in a large majority of cases professionals come together and organize themselves in structures having legal forms which vary from country to country. This is an old but important characteristic of the European accountancy profession. Having completely ignored this until now, not surprisingly one is confronted by an almost total absence of any effect of the measures which have been adopted. For as long as there remains no mutual recognition for firms in the accountancy profession, no real progress will be made in the process of liberalization.

42. FEE has made proposals in this area which, if adopted at Community level, would permit the implementation of the provisions of the Treaty for firms, while at the same time retaining the regulated character of the accountancy profession. Subject to finding an appropriate solution to whatever problems might arise in connection with the branch's legal form, it involves the recognition, as members of the profession in the host member State, of branches created in that country by firms which are members of the accountancy profession in another member State, provided that responsibility for the branch and its activities rests with a professional authorized in the host member State.

B. Freedom of professionals from one member State to establish professional firms in another member State

43. Today, only professionals authorized in a member State may establish a firm which can itself be a member of the profession in that country. In order to be able to join together in a member State with professional accountants of that country, a professional from another member State must still first obtain the mutual recognition of his/her professional qualification in that country, despite the provisions of the Treaty of Rome. The freedom to do so without mutual recognition is the only way in which professionals from different member States can practise the profession in the same professional structure.

44. FEE has also made proposals in this area in order to facilitate a better application of the provisions of the Treaty, without in any way reducing the guarantees offered to the public by the regulation of professional firms in member States. No matter what the origin of the professionals who are members of the firm, the firm would be a member of the accountancy profession in the member State where it is established. It would therefore necessarily be subject to the ethical and other rules of the profession of that country. It should therefore be possible to permit all EC professionals to create or take a stake in a professional firm in any member State, on condition that the persons responsible for the activity of the firm and the persons who sign on its behalf should be professionals authorized in the member State where the firm is established and where its services are provided.

C. Freedom for natural persons to provide services on a cross-border basis without prior establishment

45. Apart from professionals, the Treaty also provides that services themselves have the right to circulate freely within the EC, independently of the professionals who provide them. More concretely in the case of the accountancy profession, this freedom means that it should be possible for an individual professional to sell his/her services in a member State where he/she is not established and where he/she does not possess either the qualification or professional title. These provisions of the Treaty obviously conflict with all of the regulations in member States which reserve the carrying out of certain activities on their territory only to those who are members of the national professional organization or organizations. These requirements are justified primarily by the need of the regulatory authorities in each member State to exercise supervision over professionals, by the requirements relating to confidentiality and to the keeping of working papers, by the actual presence which it is necessary to have at clients etc.

46. These objections, however, do not seem sufficient to justify a total absence in this area of the application of the Treaty of Rome to the accountancy profession. To give in on this point would mean giving up for a long time the hope, however slight it might be, of ever seeing a true single Community market for accountancy services exist in reality. Furthermore, trends in the statistics on intra-Community trade in the services area allow one to conclude that the cross-border provision of services is very often a first step by the provider in establishing abroad. It appears that as soon as cross-border provision of services reaches a sufficient value to justify the creation of a more permanent structure, professionals almost always make the investment necessary to enable their activities abroad to develop further. One should recognize that this way of proceeding has a definite economic logic, and one can only imagine with difficulty how a professional would establish abroad in a market where he/she had not already found clients. As a result, to begin at the Community level with legislation relating to the free movement of professionals and to the right of establishment seems to be putting the cart before the horse and completely forgetting the basic economic logic. It is not surprising that professional accountants also follow this

logic. It is for this reason that the failure to implement the freedom to provide cross-border services without prior establishment constitutes a major obstacle to the creation of a single market for accountancy services in Europe.

47. FEE has also made proposals to solve this problem which, while respecting the regulated nature of the activities of the accountancy profession in the member States, would none the less allow a certain implementation of the provisions of the Treaty in relation to the free movement of services in the EC. The solution proposed is based on the concept of établissement ponctuel. It is designed to facilitate the provision of services on a cross-border basis while at the same time maintaining a minimum level of guarantees as regards the quality of services offered and the protection of the public. In order to do this, FEE proposes that:

(a) The services should be provided in the host member State under the responsibility of a professional properly qualified and authorized in that country to perform the activity in question;

(b) The foreign professional should be obliged to register in the member State where the services are provided, on a special list kept in that country, in order to ensure his/her compliance with the ethical and other rules imposed on professionals in that country.

48. The putting in place of such a system will not be possible unless there is a minimum level of cooperation between the professional organizations in the different member States, so as to ensure adequate supervision of professionals as they carry out cross-border activities and to maintain the protection offered to the public.

D. Freedom for firms to provide services on a cross-border basis without prior establishment

49. The Treaty provides that legal persons or firms in the EC should benefit from the same advantages and be treated in the same way as natural persons, as a consequence of which the provisions applying to the latter are also applicable to them. The arguments which have been put forward for natural persons can therefore be applied equally for the benefit of firms which are members of the accountancy profession in the EC. Given the importance of collective forms for practising the profession and the key role of the liberalization of services provision in creating the Community market, it is easy to see the major importance of this latter freedom.

50. In this area, too, FEE has proposed a solution which respects the regulated nature of the accountancy profession's activities but which also facilitates the application of the spirit of the Treaty. Here, too, the solution aims to facilitate the provision of cross-border services while keeping a minimum level of guarantees such as the right to establish branches in other member States, which are not only simple legal entities but can also be recognized as members of the accountancy profession in that country. This

means putting in place, while recognizing their specific characteristics, a system of mutual recognition for firms similar to that which has already been developed for individuals. Such a solution requires, equally, a certain level of cooperation between the professional organizations in the member States, to ensure adequate supervision of professional firms as they carry out cross-border activities within the EC.

51. The absence of provisions on the mutual recognition of professional firms which are members of the accountancy profession and the absence of the freedom to provide services on a cross-border basis without prior establishment are the two major limits which still exist in the EC, and they prevent the completion of a truly single market for accountants and accountancy services. However, one should not be too pessimistic about the situation. As recently as five years ago, from an accountancy perspective, Europe was made up of 12 separate national markets, strictly cut off from each other and with little communication between them. Since then, thanks to the adoption and gradual implementation of the general system for the mutual recognition of diplomas, the progress achieved within the EC has opened channels of communication, created bridges between these national markets, and allowed a small portion of the profession to begin to circulate from one country to another. This progress is certainly limited but is none the less a concrete step in the right direction at Community level.

52. The objective of a truly single market for accountants and accountancy services is far from being achieved, but these past five years should be put in the context of the history of the European accountancy profession. It is certain that, with the slowness appropriate for venerable institutions, the profession and its regulatory system have recently began to move. Further, there is no doubt about the direction taken. These two elements seem sufficient to justify the optimism with which FEE looks to the future of the profession in Europe. It is now necessary to have the patience to wait for these promising developments to bear fruit. FEE is doing everything to make sure this happens.

IV. THE BANGEMANN PROPOSAL FOR A EUROPEAN COMMUNITY ENTITY FOR THE LIBERAL PROFESSIONS

53. The Bangemann proposal for an EC entity for the liberal professions was launched in November 1991. To a certain extent, this proposal represents the response of the European Commission to the requirements of the Treaty in relation to the liberalization of the practice of the liberal professions in collective form. Until now, the Commission has launched proposals only for public limited companies (the proposed European Company statute) and the "social economy" (the proposals for a European cooperative, a European mutual organization and a European association). The proposal for an EC entity for the liberal professions is the third element of this approach and should fill a gap in Community law, which prejudices the completion of the Internal Market in the services sector, given the importance of the liberal professions in the economies of the member States.

54. Although the proposal is only at a preparatory stage, there are clear indications of the direction which the Commission intends to follow and of the solutions which it has in mind. It is therefore possible to assess the provisions of the proposal and their possible effects on both the accountancy profession and further progress in the liberalization process.

A. Elements of the proposed EC entity for the liberal professions

55. When the proposal was launched at the end of 1991, its contents were not very detailed. Only the broad outlines of the Bangemann proposal indicated the direction in which the European Commission would go. For this reason, the first concern of the Commission was to consult the European organizations representing the liberal professions as well as the member State Governments, so as to assess their reaction to the initiative. A short list of general questions was used as a framework for this first consultation. On the basis of the numerous responses received, and in the belief that it had obtained the agreement in principle of the professions concerned and the Governments, the Commission began to prepare a detailed proposal, this time giving a clear and precise picture of how it intended to develop the initial idea. The Commission's proposals were presented to the European professional organizations and to member State Governments in a "consultation paper on joint cross-border practice of regulated professions", which was made public on 15 October 1992. It is therefore not yet an official proposed regulation but rather a further step in the consultation process between the European Commission and interested parties. Even though it is much more developed, this 27-page document still contains a number of questions and also leaves open certain subjects on which the Commission is content to put forward broad principles - without making concrete proposals. All the same, the document gives an indication of the manner in which the Commission wishes to address the matters which are at the heart of this initiative.

56. The proposal for an EC entity, as put forward in the Commission's most recent suggestions, combines provisions dealing with both company law and the regulation of the liberal professions and requirements on liability (civil and criminal), taxation and social security. It is therefore a complex proposal, the many aspects of which demonstrate its ambition.

57. In the introduction, the Commission makes clear that "the purpose of the proposal would be to create a European form of joint practice to enable members of the professions to practise jointly in the Single Market. The aim pursued in introducing this new type of European body is to make it easier for member of the professions to practise and to co-operate across frontiers." By "European legal entity" is meant a legal form which has its legal basis in Community law only and which the member States are obliged to recognize at the national level. This means that, no matter what the national regulations of member States in relation to the practice of the professions in collective form, it should be possible to create such an EC entity there. In the same way, a European entity created in one member State could establish throughout

the EC and benefit from the privileges relating to it. This aspect of the proposal is completely in line with the provisions already envisaged for the European company or for the social economy.

58. On the other hand, the necessarily cross-border nature of the activities of the EC entity is new. In effect, as opposed to that which is envisaged for the European company or for the social economy, in principle the new entity could only be used for cross-border purposes. It is not sufficient that the professionals wishing to use this legal form should be established in at least two different member States; it is also required that the activities themselves carried on by the entity have an undoubted cross-border character. It will therefore not be possible for a professional to use this legal form to provide services in his/her own country. The proposal does not envisage reducing or abolishing the limitations which currently exist in certain countries on the use of collective or corporate forms for the exercise of the liberal professions. The proposal is content to make the use of this form possible throughout the EC for the cross-border provision of services only. Furthermore, member States have also asked, in the course of discussions on the proposal, that this aspect should be reinforced: they wish the most strict guarantees to be put in place as regards the purely cross-border nature of the activities to be carried on by the new entity.

59. No matter what happens, the Commission intends to give this EC entity full and complete legal powers, in particular by allowing the entity itself to carry on the professional activity. At present, none of the legal forms currently existing in the member States, be they partnerships or limited liability companies, can meet this condition and at the same time be acceptable to all of the professions concerned in all of the member States. As a result, the Commission believes that it is not possible to favour one or the other approach and finally proposes "a special sui generis type of company possessing legal personality which would combine the advantages of the partnership with those of the limited company". The consultative document, however, does not make clear which legal regime would apply to this sui generis firm.

60. The EC Commission also proposes that both natural persons and firms could be members of this European entity, on condition that the former be nationals of the EC and that the latter should be made up only of persons having the nationality of an EC member State. The capital of the entity would be a minimum of 100,000 ECUs.

61. Turning to those aspects of the proposal dealing mainly with the regulation of professions, in its document the European Commission attempts to define the professions covered by the proposal and the members of which would be able to use the new legal form. Having determined "that there is no legal definition at present in the member States of what constitutes a profession" and that "the concept of a regulated profession seems unsuitable as a sole criterion", the Commission proposes that the benefits of the EC entity should be available to "members of any occupation:

"(a) The individual exercise of which is in at least one member State restricted to practitioners fulfilling conditions laid down by laws, regulations or administrative provisions enacted by that State relating to their specialised knowledge and possibly also to their character and repute; and

"(b) The joint exercise of which within a structure provided for in national law is prohibited, or restricted by conditions relating, for example, to the proportion of shares or voting rights that must be held by individuals possessing the qualifications required for the individual exercise of the occupation."

62. The profession would be practised jointly by the members and by the entity, since the purpose of the entity should be the very practice of the profession. The entity could only provide services in the member States of origin of its members. Nevertheless, the Commission proposes to enable non-professionals to participate in the capital of the entity, on condition that "at least the simple majority of capital and voting rights (51 per cent) be in the hands of members of the profession active in the practice". These provisions lead the Commission to examine the requirements for partners' qualifications. In effect, given that the entity cannot be used by a professional to provide services in his/her own country, and given that the profession will always be practised jointly by the entity and by a professional, the Commission's proposal will obviously have the consequence of allowing a foreign professional to provide services on a cross-border basis in a member State where he/she is not established and where he/she does not hold the professional title or titles. It is for this reason that the European Commission proposes a system of simplified recognition which will allow every professional who is a partner in the entity to carry on professional activities in a member State where he/she is not himself established but where one or more of his partners in the entity are established, without being obliged to undergo the procedures for mutual recognition of diplomas as instituted by the relevant directives. "This simplified system would be justified by the presence in the host member State of a partner established and qualified there and by the arrangements for liability within the practice." The professional activities would be carried on by the foreign partner in the host member State using the professional title of his/her home member State in order to avoid any possible confusion on the part of the public.

63. The ethical requirements applied would be those of the member State where the professional service is provided. As regards the provisions on liability, the Commission document makes a distinction between different types:

(a) In the case of debts related to the exercise of the profession:

(i) Each partner has unlimited liability for the financial consequences of his/her professional malpractice;

(ii) The practice is jointly liable with the partner, without limit.

(b) In cases of damage ensuing from a professional act, the injured party may claim compensation from either the partner or the practice. In principle, as long as each partner practises in the member State in which he/she is established, there is no joint liability between partners for the professional malpractice of one of them. However, if one partner provides professional services in the member State where another partner is established, it might be appropriate to provide for joint liability between the partners for the professional malpractice of the former.

(c) The practice alone would be liable, to the full extent of its assets, for debts related to the running of the practice.

64. No particular provisions are made in relation to disciplinary liability or criminal liability. The practice and each of its active partners would be required to have compulsory insurance coverage for civil professional liability.

65. The taxation and social security requirements to which the entity would be subject are not fully addressed by the Commission, and the document is content to state that double taxation of profits earned by the entity should be avoided, as should making its partners liable to pay double social security contributions.

66. All of the above provisions put forward by the Commission are in the context only of a mono-disciplinary practice - that is, one grouping together professionals carrying on the same activity. However, the Commission does not rule out the possibility of creating a multidisciplinary EC entity which would therefore group together professionals who could carry out very diverse activities. But in this area, the Commission is far from having reached a clear and definitive position and is content to raise the main questions to which such a development gives rise, without even beginning to think about a response. The door therefore remains open in this regard, but the complications which would result as regards simplified recognition, incompatibilities in the member States and professional liability seem to be of such a nature as to exclude any such development.

B. Impact of the proposal on the completion of the Single Market - Opinion of FEE

67. As the representative organization for the accountancy profession in Europe, FEE was consulted by the European Commission on the Bangemann proposal. It is only fair to say that the Federation has reacted with scepticism to the EC entity. Despite the economic and legal justifications which the Commission has tried to put forward in relation to the proposal, FEE is convinced that the EC entity will not lead to any progress in the following areas:

(a) Mutual recognition of professional firms;

(b) Freedom of natural persons and firms to provide services on a cross-border basis without prior establishment abroad;

(c) Freedom of professional firms to establish abroad.

68. It has already been seen that the Treaty of Rome itself provides that these different freedoms should be implemented. The Single Market has existed since 1 January 1993, but the accountancy profession, like many other regulated professions, has not benefited significantly. Even worse, the Bangemann proposal has stopped all work in the areas identified by FEE as being essential. This is why the proposed EC entity has not been really welcome. By dealing with so many issues, and by trying to deal at once with the mutual recognition of a certain collective form for the practice of the liberal professions and with putting in place a specific mechanism for providing cross-border services, the proposal risks leading to nothing and not dealing properly with either one or the other of these two fundamental freedoms.

69. However, in a constructive spirit, FEE has attempted to add a positive contribution to the project so that it can develop in a manner acceptable to the European accountancy profession. If the proposal succeeds, it could, despite everything, have a positive impact on the creation of a single market, and it is important not to neglect any opportunity. As regards a mono-disciplinary entity, and without going into the details of the provisions foreseen by the Commission consultative document, FEE considers that three essential conditions should be respected simultaneously:

(a) Apart from the liability of the firm and of the professional providing the services, the regulation being prepared should require that a professional properly qualified and authorized to carry on the same activities in the member State where the services are provided should also be liable;

(b) Only professionals should be able to benefit from the European entity and the cross-border nature of its activities, and it is not useful to provide access to non-professionals. All of the capital and voting rights of the entity being created should therefore be in the hands of professionals;

(c) The system of simplified recognition proposed by the European Commission should operate only within the same category of profession, as defined by the First (89/48/EEC) and Second (92/51/EEC) mutual recognition Directives. The provisions of these two directives in relation to the passerelles between the different levels of professionals and the compensation mechanism introduced for this purpose by the general system of mutual recognition of diplomas should not be circumvented even before they enter into effect, since they are essential to provide the necessary safeguards to maintain the quality of services and the protection of the public. They should therefore remain the rule.

70. It is hoped that these proposals will be taken into account by the Commission in drafting its proposed regulation, but at this stage it is very

difficult to get a clear idea of the details of this European entity in those areas affecting the European accountancy profession.

71. The consultation procedure between the European Commission and the various interested parties is still continuing. Having made great efforts to advance the project in 1992, it appears that the Commission finally realized the complexity of its task and has accepted that its discussions with member States and interested professions should continue into 1993. The number of questions still unanswered in the most recent consultation document show that the Commission's ideas need to be developed further, before it is possible to finalize the text of the official proposed regulation. According to the timetable unofficially announced by the Commission, the consultation should continue during the first half of 1993. The official publication of a proposed regulation could probably not take place before the end of 1993. This publication would mark the beginning of the Community legislative process. This requires the involvement of the Council of Ministers, the European Parliament, the Economic and Social Committee and the Commission, and it normally lasts for several years. At the end of this process, there is normally a period of one or two years during which member States should bring their national legislation into conformity with the requirements of the text, and at the end of which the requirements should be applied. There is therefore still a long way to go before the proposal will become a reality for professional accountants. In addition, if one considers the similar experience of public limited companies with the proposed European company statute, one could even be afraid that the process will never be finished. In effect, the complexity of the subjects which have been raised by the proposed European company statute and the contradictory opinions defended by member States in many areas have delayed its adoption for over 20 years. The Bangemann proposal does not seem any less complex, and it is probable that the same causes will have the same effects. Even if the proposal is the most visible sign that the European Commission is not satisfied that the general system of mutual recognition of diplomas is enough to ensure liberalization of the services sector, one can still question its realism and even doubt the capacity of the Community institutions to implement rapidly the provisions of the Treaty of Rome in the most complex economic sectors.

V. JURISPRUDENCE OF THE EUROPEAN COMMUNITY COURT OF JUSTICE AND THE RAMRATH DECISION

72. The hopes of the European accountancy profession which were created by the mutual recognition directive were slowly beginning to disappear, given the apparent inability of the European Commission to propose - as it alone has competence to do - legislative measures having a real impact on the liberalization of the accountancy profession and other regulated professions in the EC. Then the EC Court of Justice stepped in to change the course of events with a decision handed down on 20 May 1992 in the case (C 106/91) between Mr. C. Ramrath and the Luxembourg Minister of Justice, with the Institut des réviseurs d'entreprises. The decision demonstrates the tremendous efficiency of the EC Court of Justice in implementing the Treaty,

for it required less than one and a half years to make changes that the traditional Community legislative mechanism would certainly not have been able to bring about with many years of effort.

73. Mr. C. Ramrath is a Wirtschaftsprüfer from Germany, where, among other activities, he carried out statutory audits on behalf of Treuarbeit AG, Wirschaftsprüfungsgesellschaft, of which he was an employee. He moved and established himself in Luxembourg, where he became an employee of Treuarbeit Luxembourg, a Luxembourg firm registered on the list of auditors in that country. In February 1985, Mr. C. Ramrath obtained from the Luxembourg Ministry of Justice authorization to practise as a réviseur d'entreprises. In 1988, Mr. C. Ramrath left Luxembourg and returned to Düsseldorf where he again worked for Treuarbeit Düsseldorf. However, he continued occasionally to do certain audit work in Luxembourg. On 19 May 1989, the Luxembourg Minister of Justice withdrew from Mr. Ramrath his authorization as réviseur d'entreprises, on the grounds that Mr. Ramrath no longer had a professional establishment in Luxembourg, as the Luxembourg law obliged him, and that as an employee of Treuarbeit Düsseldorf, a non-Luxembourg firm, he no longer fulfilled the requirements of independence imposed on réviseurs d'entreprises by the same law.

74. Mr. Ramrath, considering himself to be the victim of discrimination, appealed to the Conseil d'Etat in Luxembourg, which, in order to reach a decision, asked the EC Court of Justice in March 1991 to give a preliminary ruling on the interpretation to be given to the provisions of the Treaty of Rome applicable to the case.

75. Since the facts briefly outlined above had not been determined definitively by the Luxembourg Court and given the difficulties which this caused by virtue of the links existing between Treuarbeit Luxembourg and Treuarbeit Düsseldorf, the European Court was obliged to consider all of the different cases possible. Mr. C. Ramrath might have found himself in one of three different situations:

(a) He could be an employee of Treuarbeit Luxembourg when he worked in Luxembourg. In this case, the applicable provisions of the Treaty are those relating to the free movement of workers - in particular, article 48;

(b) He could practise the profession of réviseur d'entreprises independently. In this case, the provisions of the Treaty relating to freedom of establishment would apply - in particular, articles 52 and 56;

(c) In Luxembourg he could be a provider of services established in Germany. In this case, the provisions of the Treaty on provision of services would apply - in particular, article 59.

76. One of the great virtues of the EC Court of Justice decision is that it provides a single answer to the questions submitted to it, irrespective of the situation in which Mr. Ramrath found himself. This means that the judgement has very broad and general impact, useful in future in very varied cases.

77. Having recalled that the Treaty aims "to facilitate, for Community citizens, the carrying out of all types of professional activities throughout the entire territory of the Community", the Court pointed out that, none the less, certain refinements of the principle should be envisaged in certain very specific cases, "taking account of the particular nature of certain professional activities". Confirming its jurisprudence of recent years, the Court said that it would only be possible to limit the principle of free movement of persons "by regulations justified in the general interest", provided that these regulations applied in the same way to all of those wishing to carry out the activity in question on the territory of the member State regulating them. The Court added to these first two conditions that it should be ascertained whether the general interest in question "is not already safeguarded by rules to which the foreign professional is subject in the member State where he is established" and that the particular requirements imposed by the regulation of the member State "should be objectively necessary so as to guarantee compliance with the professional rules and to ensure the protection of the interests which the regulation aims to protect". Four conditions should therefore be fulfilled in order that a member State can, by means of a particular regulation, impose on its territory certain restrictions on the principle of free movement of persons, for purposes of carrying out a particular professional activity:

(a) The objective of the regulation should be to protect the general interest;

(b) The regulation should apply in the same way to all Community citizens who wish to carry on this activity on the territory of the member State;

(c) This general interest should not already be protected by the rules of the member State where the professional is established;

(d) The same result should not be obtainable by means of less burdensome rules.

78. Having recalled these general principles, the Court examined the particular case of the profession of réviseur d'entreprises. The practice of this profession was the subject of the Eighth Company Law Directive, the effects of which have been explained above. In particular, the Eighth Directive leaves it to member States to draw up the rules which should be applied to statutory auditors in order to ensure their integrity and independence. The Court drew the conclusion "that the member State may meet this requirement by requiring conformity with professional rules justified in the public interest, and in this respect provisions requiring the existence of an infrastructure on its territory and a certain effective presence on the part of the auditor appeared justified to ensure the protection of this interest".

79. The Court therefore confirmed the legitimacy of the requirements of the Institut des réviseurs d'entreprises with regard to the establishment of

professionals in Luxembourg, which were necessary to enable it to fulfil its functions to supervise the profession, which were imposed on it by the Luxembourg law. But the European Court did not stop there; it also examined the way in which these conditions could be met by professionals from other member States.

80. This is the major contribution of the decision, because it gives judicial backing for the first time to the existence of the concept "établissement ponctuel" proposed by FEE in 1987 and promoted without great success since then in dealings with the European Commission. The decision states that where the statutory audit of accounts is carried out by a statutory auditor who, being established and authorized as such in another member State, is temporarily at the service of a person or firm authorized to practise the profession of statutory auditor by the authorities of the member State where the said audit is carried out, the requirements relating to the existence of an infrastructure on its territory and a certain effective presence of the auditor no longer seem to be objectively necessary. In effect, in similar circumstances, it is through this person that the member State can ensure the observance of the rules by the auditor carrying out audits from time to time on its territory.

81. Following this reasoning, the Court summarizes its position in the following way:

> "Articles 48 and 59 of the Treaty do not preclude a member State in its own territory from making practice as an auditor by a person already authorized so to practise in another member State subject to objectively necessary conditions concerning compliance with professional rules, a permanent infrastructure for the performance of the work, actual presence in that member State and supervision of compliance with practice rules, unless the aforementioned rules and conditions are already observed through the intermediary of an auditor, whether a natural or a legal person, established and authorized to practise in that territory, and in whose service the person seeking to practise as an auditor is employed for the duration of the period of practice."

82. The Court also lays down the two elements which are essential for the use of the concept of "établissement ponctuel". The professional from another member State should first of all be qualified and authorized to carry on the same activities in that member State. In addition, he/she should practise under the control and responsibility of a professional authorized to carry on this activity in the member State where the service is provided. The judgement makes concrete the right of the authorities responsible for supervising professionals on the territory of the member State where the service is provided to supervise only the professional authorized in that member State and to hold him/her responsible for the actions of the foreign professional working under his/her responsibility. In this way, there is a sort of transfer of supervisory power over the foreign professional to the professional responsible for his/her activity in the member State where he/she works. The Court makes very clear that the foreign professional should be

placed at the service of a professional authorized in the member State where the service is provided, and also underlines the links of dependence which bind these two persons.

83. Given the significant differences which remain in the activities of professional accountants in the EC, which have already been described above, the expansion of the use of the concept of "établissement ponctuel" to areas beyond statutory audit will not happen automatically. None the less, the general principles set out in a clear and precise manner by the European Court show a way forward for those European accountants who wish to make further progress.

84. In addition, the impact of the decision can be extended to firms, because the Treaty provides, in article 66, that the provisions applying to natural persons are also applicable to them. Professional firms authorized to carry out statutory audits in one member State will therefore be able to provide identical services in other member States, under the control and responsibility of an auditor, either a natural person or a firm, authorized to carry out statutory audits on the territory of the member State where the service is provided. This is the first time that firms in the EC benefit equally from the liberalization measures foreseen in the Treaty. Now that the European Court has confirmed this logic, it is difficult to imagine how the absence of mutual recognition for firms, which today is the rule, can continue to escape the liberalization foreseen in the Treaty for much longer. Whether progress in this area will come from the European Commission, in the way for which FEE has called for over five years, or from the European Court seems to be the only question which is really relevant today.

85. The reasoning followed by the European Court for statutory auditors could also be applied to all other regulated professions in the EC. This decision can therefore have enormous repercussions for all professional service providers regulated in member States, whether these be natural persons or firms.

86. It took almost seven years to adopt and implement partially only the first (89/48/EEC) mutual recognition directive. In just over one year, the European Court of Justice has enabled much more significant progress in liberalizing the services sector. The decision of 20 May 1992 is important for both its immediate impact as well as for the great opportunities it opens for the European accountancy profession. If the significance which we attach to it is confirmed in reality, the single European market for accountancy services may actually become a fact.

VI. FUTURE PROSPECTS

87. On the basis of this tour d'horizon, developments in Community regulation may well appear slow and not very coherent. While no attempt is made to disguise the negative aspects, it has also been attempted where possible to emphasize the positive aspects of current developments. The mere fact that these developments are taking place is in itself a sufficient reason to be

optimistic. No matter how long the process of liberalization lasts, it is certain that the initial push which was given to this movement was in the right direction. The recent developments in jurisprudence demonstrate that it does not take much to bring about further progress.

88. The changes which have characterized the international scene for several years also demonstrate how the process initiated by the 12 member States of the EC is expanding throughout the world, so that the major principles developed and implemented in the context of the Single Market programme have truly global repercussions.

89. To begin with, the European Economic Area (EEA), which will come into being during 1993, will extend to six EFTA countries the benefits of Community provisions relating to the free movement of persons, goods, services and capital. For the accountancy profession in these countries, one can hope for developments identical to those which were explained in detail in the first two sections of this paper. The professional organizations in these countries have been preparing themselves for several years, and the changes in professional regulation which will result are therefore in line with the developments which have been described for the EC.

90. The genuine revolution which has been taking place for the past three years in the countries of Central and Eastern Europe and the steps taken to ensure a transition of their economies from central planning to a market economy are deliberately based on the model of the European Single Market. The links which have already been developed by the EC with certain of these countries by means of association agreements or through the PHARE and TACIS programmes demonstrate the wish of those countries to do everything to benefit as quickly as possible from the advantages of the Single Market. All of the actions taken, in particular in relation to the regulation of the accountancy profession, aim at facilitating the entry of these countries into the EC as quickly as possible. In making its contribution to this development, FEE is in the process of establishing cooperation agreements with the professional organizations in these countries to help them develop the highest standards of professional education and training, competence, ethics etc. This is a long-term process which should enable these countries to introduce rules comparable to those which exist or are being developed in the EC. The ultimate objective is to integrate these emerging professional organizations into the European accountancy profession, with a view to creating a large European market for accountants and accountancy services.

91. Finally, even if negotiations are still going on, the GATT talks show clearly the trend in the development of the regulation of services at the world-wide level. The main principles contained in the proposed GATT text draw directly on the regulations developed in the EC in relation to the mutual recognition of professional qualifications. The complexity of such an initiative at the world-wide level will certainly limit, whatever happens to GATT, the results which can reasonably be expected from these negotiations. Whatever happens, all the indications are that the Uruguay Round is only one step in the GATT negotiations. Discussions between the major economic

partners will probably continue, on the same basis, at least as far as principles are concerned.

92. On the other hand, one can see that the principle of mutual recognition has repercussions for developments which do not affect Europe. For example, following the signature of the United States/Canada Free Trade Agreement, the professional organizations in the United States and Canada - the American Institute of Certified Public Accountants, the National Association of State Boards of Accountancy and the Canadian Institute of Chartered Accountants - have recently reached agreement on the main principles of a process of mutual recognition of professional accountancy qualifications in these two countries. This agreement is largely influenced by the principles developed and applied in the EC and from which the European accountancy profession is gradually benefiting. The latter development, perhaps more than the others, shows the attraction and strong economic logic of the liberalization of the accountancy profession which is now under way.

93. It is often said that one swallow does not make a spring, but when developments are so widespread and so similar with regard to the principles they implement, one cannot doubt that change is under way. The changes affecting the European accountancy profession today will tomorrow affect professionals in other continents. The profession as a whole has much to gain and the public which it serves has nothing to lose, provided that it is willing to adapt to and even encourage the changes which are taking place.

Appendix I

ACTIVITIES OF THE ACCOUNTANCY PROFESSION IN THE EUROPEAN COMMUNITY

Country	Statutory audit	Accounting	Merger audit	Contribution audit	Public sector audit	Insolvency practice	Expert witness	Representation of clients	Investment services	Tax advice	Consulting
Belgium	1	1	1	1	1	2	2	--	3	2	2
Denmark	1	2	1	1	2	2	2	2	3	2	2
France	1	1	2	2	1		2	--	3	3	3
Germany	1	1	1	2	2	2	2	2	3	2	2
Greece	1	1	2	2	1	1	1	--	3	2	2
Ireland	1	2	2	2	2	2	2	2	3	2	2
Italy	1	1	1	1	2	2	2	2	3	2	2
Luxembourg	1	1	1	1	2	2	2	2	3	2	2
Netherlands	1	2	1	2	2	2	2	2	3	2	2
Portugal	1	2	1	1	--	2	2	--	3	2	2
Spain	1	2	1	2	1	2	2	2	3	2	2
United Kingdom	1	2	2	2	2	2	2	2	2	2	2

1 = Regulated activity exclusively reserved to accountancy professionals.

2 = Activity shared with other professions.

3 = Ancillary activity.

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Appendix II

STRUCTURE OF THE ACCOUNTANCY PROFESSION IN THE EUROPEAN COMMUNITY

Country	Number of first-tier bodies	Number of second- or third-tier bodies	Number of statutory auditors' bodies	Number of specialized institutes (First tier)	Functional title for statutory auditors	Number of FEE member bodies
Belgium	2	1	1 a/		Yes b/	2
Denmark	1	1				1
France	2	..	1 a/		Yes b/	2
Germany c/	1	5				1
Greece d/	2	..	1 a/			2
Ireland	1	2				1
Italy e/	2	1			Yes b/	2
Luxembourg	2	..	1 a/		Yes b/	2
Netherlands f/	1	1				1
Portugal	1	..				1
Spain g/	3	..				1
United Kingdom	5	12		2	Yes b/	5

a/ Professionals who belong to the statutory bodies may perform audit services only.

b/ The title permits professionals to act as auditors only.

c/ The practice of statutory audit is shared between Wirtschaftsprüfer who are first-tier professionals and vereidigte Buchprüfer who enjoy a far more restricted competence and are second-tier professionals in this country.

d/ The sytem is currently being changed. Both institutes will disappear and a new single organization will be established.

e/ Statutory audit is practised by the Collegio Sindscale, a collective body composed of three individuals which is also charged with controlling the legality of companies. The statutory audit of listed companies is performed by audit firms approved by CONSOB.

f/ The system is currently being changed. In the future, both professional organizations will enjoy the same rights in the field of statutory audit.

g/ The practice of statutory audit is shared between the members of all three first-tier bodies. Even in the absence of a functional title to practise this activity, the Finance Ministry keeps a register with the names of all those approved as statutory auditors.

Appendix III

ACCOUNTANCY FIRMS IN EUROPE

Country	Type of firm permitted	Members/partners	Management
Belgium	Associations of all kinds taking the form of business organizations (SPRL, cooperative, SNC, SA, SCA). Incorporated companies (SA) and limited partnerships: shares must be registered. Prohibited by IRE: incorporated companies and limited partnerships.	All members/partners, whether Belgian or foreign, must be professionals. A professional may be a partner of only one firm in Belgium in which he/she must practise. The majority of shares and voting rights must be held by professionals registered with IRE or IEC.	The majority of directors and managers must be professionals registered in Belgium. Only natural persons may serve as managers.
Denmark	All.	No restrictions.	All managers and a majority of directors must be registered professionals.
France	All, with the exception of SNC and SCS.	Auditing firms: three fourths of the members/partners must be registered auditors (except in the case of professional associations: 100%). Accounting firms: at least three public accountants must be members/partners holding a majority stake in the firm. In both cases, there is no requirement with respect to practice of the profession.	Auditing firms: management must be exercised by a member/partner who is a registered professional. Three fourths of the directors must be professionals. Accounting firms: in the case of incorporated companies (SA) and limited-liability companies (SARL), the managers must be professionals. The majority of directors must be professionals.

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Country	Type of firm permitted	Members/partners	Management
Germany	All, except: - GmbH & Co KG - GIE and GEIE	Natural or juridical persons Partnerships: all partners must be professionals. Joint-stock companies: the majority of shareholders must be professionals or possess equivalent status, and they alone may have the right to vote.	Actual management of the firm must be in the hands of a professional (WP). The majority of directors or managers must be professionals (WP).
Greece	None.		
Ireland	Partnership only for statutory auditing. Other activities: all.	Three fourths of members/partners must be professionals, and three fourths of the capital and voting rights must be held by professionals who are members of ICAI.	Management of the firm must be exercised by professionals who are members of ICAI.
Italy	All.	Joint-stock or limited-liability companies: all members must be institutions of national standing. Firms in which partners are jointly and severally liable: the majority must be registered professionals. Shares must be registered and any transfer of shares is subject to approval.	In the case of auditing firms, the majority of directors must be professionals with five years' experience. Other firms (i.e., those not authorized to perform statutory audits): at least one director must be a professional.
Luxembourg	All.	Auditing: a majority of voting rights must be held by natural persons authorized to practise in Luxembourg.	Auditing: the majority of directors or managers must be natural persons authorized to practise in Luxembourg.
Netherlands	All.	All must be members of NIVRA or an institution of equivalent standing.	All members of supervisory bodies must be professionals recognized by NIVRA.

Country	Type of firm permitted	Members/partners	Management
Portugal	Professional partnership only.	All must be professionals.	Management must be exercised exclusively by professionals.
Spain	All.	Natural persons only. The majority of capital and voting rights must be held by practising professionals.	The majority of directors and managers must be practising professionals.
United Kingdom	Partnership only (soon to be extended to all types of firms).	Audit: auditing must be performed by professionals. Investment business: a majority of the partners must be professionals, who must also hold the majority of voting rights.	Audit: management of the firm must be exercised by professionals. Investment business: at least half of the managers must be professionals.
Austria	Partnerships, limited-liability companies and joint-stock companies. This list may be expanded.	Natural persons only. The majority of capital and voting rights must be held by professionals.	The managers of the firm must be professionals and only they are authorized to represent the firm and enter into commitments on its behalf.
Malta	Partnership without legal personality.	Natural persons only. All partners must be professionals who possess the requisite diploma.	All partners can be managers and can act on behalf of and represent the firm.
Norway	All.	Partnerships: only professionals can be partners. Limited-liability companies: the majority of capital must be held by professionals. Non-professional members must be in the employ of the firm.	Partnerships: only professional partners can be managers. Limited-liability companies: the majority of the Board of Directors must be professionals. The firm's managers may be non-professionals.

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Country	Type of firm permitted	Members/partners	Management
Sweden	Joint-stock companies and partnerships only.	All members must be professionals.	Management may be exercised only by professionals. Managers do not necessarily have to be members/partners.
Switzerland	All.	Natural or juridical persons, whether or not professionals The majority of voting rights must be held by professionals.	Management may also be exercised by non-professionals or by a non-member/non/partner in the employ of the firm. In such a case, however, the institute requires certain minimum professional qualifications; in addition, the majority of managers must be professionals.